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SIPDIS

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TAGS: [PREL](#) [PHUM](#) [PGOV](#) [KDEM](#) [KE](#)
SUBJECT: POST-ELECTION VIOLENCE COMMISSION REPORT:
POLITICIANS DIVIDED OVER IMPLEMENTATION

REF: A. NAIROBI 2401
[1](#)B. NAIROBI 2366
[1](#)C. NAIROBI 1838 AND OTHERS

Classified By: Ambassador Michael Ranneberger for reasons 1.4 (B and D)

SUMMARY

[1](#)1. (U) Two weeks after release of the Commission of Inquiry into Post-Election Violence (CIPEV) report (refs A and B), Kenya's political leaders continue to publicly grapple with fallout. Of particular contention is whether to implement the report's recommendations for a special tribunal to try high-level organizers of post-election violence. President Mwai Kibaki and Prime Minister Raila Odinga have consistently called for implementation of the report. Kibaki's Party of National Unity (PNU) has yet to take a position on the report, though indications are that there is serious resistance.

[1](#)2. (U) On October 30, the Parliamentary Group of Odinga's Orange Democratic Movement's (ODM) rejected the report. 75 of 102 ODM MPs attended the meeting and concluded that it contains "incurable errors", creating a serious obstacle to passage of the report in parliament. This opens the possibility of a challenge to Odinga's leadership or split in ODM. The ODM backlash is led by Rift Valley MPs, while Central Kenya MPs are hesitant to support Kibaki's call for implementation of the report. Media speculation about the names of the ten suspects mentioned (but not named) in the report is rife. High-level politicians from both sides of the Grand Coalition government are presumed to be among the ten, including key political allies of Kibaki and Odinga, such as Deputy Prime Minister Uhuru Kenyatta (PNU) and Agriculture Minister William Ruto (ODM); each has issued defensive statements challenging the sufficiency of evidence linking them to violence.

[1](#)3. (U) Kibaki and Odinga appear willing to push the issue forward despite the risk it poses to these allies; a Cabinet retreat is planned to try to find common ground on the report. Even if Cabinet adopts the report, PNU will need time to get its MPs to support implementation, while ODM will need to restart discussions after a large majority of its MPs rejected the report. To bring MPs along, Kibaki and Odinga will need to compromise; opponents of implementation will try to dilute the independence of the proposed special tribunal. Agreement is likely to be found if only to avoid the prospect that the International Criminal Court asserts jurisdiction over Kenyans. Despite the challenges, Odinga

told the Ambassador on October 27 that he is confident that the report will be implemented. We will continue to push for implementation through a Kenyan mechanism, as called for in the CIPEV report to assure accountability in line with Assistant Secretary Frazer's public statement of October 29. Clear statements by the U.S. and Annan on the need to carry out fundamental reforms and end impunity are playing a catalytic role to mobilize civil society, the private sector, and media. End Summary.

Implementation Issues

14. (U) Since the Commission of Inquiry into Post-election Violence (CIPEV - also known as the Waki Commission) released its report on October 15, Kenyan politics has been dominated by discussion of the report's conclusions and its political and legal implications. The report called for sweeping reform of the police services and the establishment of a special tribunal with strong international participation to try high-level organizers and financiers of post-election violence (ref a). Kenya's political leaders have a long history of inaction on recommendations of previous commissions of inquiry. However, their hand has been forced by the Waki Commission's decision to give Kofi Annan the names of ten high-level organizers of post-election violence for referral to the International Criminal Court (ICC) if Kenya fails to establish the special tribunal. CIPEV Chairman, Justice Philip Waki, has publicly stated that the names will be submitted to the ICC Prosecutor if no action is

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taken by February 28, 2009. With Kenya now facing a deadline, debate is raging is whether or not to implement the report. Kenya's political leaders are divided on the degree and manner of implementation of the CIPEV report.

Frantic Speculation

15. (SBU) The Kenyan media has been frantically speculating about which high-level figures are among the ten suspects mentioned (but not named) in the CIPEV report. Some high-level political figures who have been subject to speculation as possible indictees are:

- William Ruto, Minister of Agriculture, Orange Democratic Movement (ODM)
- Uhuru Kenyatta, Deputy PM, Minister of Trade Party of National Unity (PNU)
- George Thuo, MP Juju, PNU Parliamentary Whip
- Zakayo Kipkemai Cheruiyot, MP Kuresoi (ODM)
- Isaac Kiprono Ruto, MP Chepalungu (ODM)
- Franklin Bett, MP Buret (ODM)
- Cyrus Jirongo, MP Lugari (Kaddu - not affiliated with either PNU or ODM)
- Fred Kapondi, MP Mt. Elgon (ODM)
- Kabando wa Kabando, MP Mt. Mukurweini (PNU)
- Simon Nyachae, ex-MP, FORD-K (PNU-affiliated)
- Ruben Ndolo, ex-MP, ODM

16. (SBU) William Ruto is widely suspected of being a key organizer of post-election violence in Rift Valley Province, as are Cheruiyot, Isaac Ruto, and Franklin Bett. The PNU figures on the list have been implicated as having either planned, supplied, or provided transport to members of the ethnic Kikuyu Mungiki criminal organization to execute revenge attacks against non-Kikuyu in Naivasha and Nakuru in mid-January 2008. The big fish in this equation, William Ruto and Uhuru Kenyatta, have had different reactions to the speculation. While Ruto has sought to call into question the credibility of the report by calling it a collection of hearsay and not worth the paper it is written on. He initially also stated that he is not afraid to go before a

tribunal to clear his name. Uhuru Kenyatta has been even more defensive and strident in trashing the report. PNU Whip George Thuo has proclaimed his innocence, but accepts that the report should be implemented.

Call for Full Implementation

¶7. (U) President Kibaki and Prime Minister Odinga have consistently called for the full implementation of the CIPEV report. Initially, they planned to table the CIPEV report at a Cabinet meeting set for October 30. However, this was postponed because President Kibaki opened the IGAD summit taking place in Nairobi that day. Kibaki and Odinga have planned a Cabinet retreat, at which the CIPEV report will be discussed. We do not expect this retreat to result in Cabinet adoption of the report, but it shows that Kibaki and Odinga are moving the issue forward. We understand that the Cabinet will debate the report at its next scheduled meeting on November 13.

Will their parties follow?

¶8. (U) Kibaki's Party of National Unity (PNU) has not yet taken a firm stand on the CIPEV report. However, indications are that Odinga will have a hard time bringing his Orange Democratic Movement (ODM) to support his call for full implementation of the report. On October 30, the ODM Parliamentary group rejected the CIPEV report.

¶9. (C) PNU has not yet come to a unified position on implementation. Some key figures, such as Minister of Justice Martha Karua, call for full implementation, while others have taken a more cautious approach. PNU Central Province coordinator (and Kinangop MP) David Ngugi told poloff that PNU regional leaders agreed that the report should be implemented, but that it must be handled cautiously because

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of the inflammatory nature of the charges likely to be leveled against Kikuyu leaders. (Comment: Many Kikuyus feel that Kikuyu leaders implicated in post-election violence were engaging in self-defense and should not be equated with Rift Valley organizers, who engaged in unprovoked violence. End Comment).

¶10. (C) Ngugi also noted that PNU feels obliged to protect Uhuru Kenyatta, who many see as the next leader of the GEMA (the ethnic Kikuyu, Embu, and Meru) political grouping and a future president of Kenya. A meeting of the GEMA-dominated Central Kenya Parliamentary (CPK) group called by Uhuru Kenyatta and the Minister of Energy, Kiraitu Murungi, criticized the Waki Report for conducting a partial investigation. It concluded that the Report must be amended for parliament to approve it. Kenyatta issued a public statement opposing the full implementation of the CIPEV report.

¶11. (U) Those calling for a go-slow approach in both ODM and PNU accuse those seeking full implementation of the report as attempting to settle political scores against rivals who are potentially implicated in post-election violence. There may be some element of truth in these charges -- certainly Martha Karua's 2012 presidential bid would be helped if Uhuru Kenyatta were to face trial. Likewise, Odinga (and Mudavadi) would benefit from a potential trial of William Ruto -- a potential rival whose future would be severely diminished. But it stretches the truth to suggest that support for implementation is solely motivated by these short-term political considerations. Kibaki, in his last term, does not need to worry about future political rivals. He and Odinga seem to be motivated by the need to address post-election violence to move the country forward. For her

part, Martha Karua has been a proponent of ending Kenya's culture of impunity since her days leading the fight for multi-party democracy in the 1990s.

Public sentiment mixed

¶11. (U) Many in Kenyan society have emphasized the need for a forward-looking response to the crisis, focusing on restorative, not retributive, justice. They stress the need to complete Kenya's healing by using the reform processes laid out in Agenda Point 4 of the National Accord and Reconciliation Agreement to prevent a recurrence of violence. There is, however, a growing chorus urging implementation. This is evident in prominent media editorials and commentary, statements by religious groups, among others. Kenyan human rights and governance organizations support full implementation of the report to bring justice for the victims, but also see establishment of a special tribunal as a key step towards breaking the culture of impunity that remains largely undiminished among Kenya's elite. Statements by Assistant Secretary Frazer, the Ambassador, and Kofi Annan have played an important role to energize these groups - who were also key in resolving the post-election crisis.

Comment

¶12. (U) The ODM Parliamentary Group's rejection of the report, while certainly serious, does not necessarily mean the end of the line for the report. It will, however, force Odinga to seriously reevaluate his position and make him more inclined to seek compromise to regain his party's support on the issue. Kibaki, too, must work to get his supporters to agree on a way forward. We will urge Kenya's leaders to implement a Kenyan solution to hold organizers of post-election violence accountable.

¶13. (U) The threat of Kenyans being tried by the ICC is powerful leverage to influence Kenya's leaders to implement a mechanism to hold accountable alleged organizers of post-election violence, even if they vary from the report's special tribunal proposal. Those opposed to establishing a special tribunal are likely to try to dilute the tribunal's independence, and will use nationalist arguments to remove the strong international presence proposed for the tribunal's trial and investigative branches. Their goal will be to

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create a body more acceptable to Kenyan nationalist sensibilities, but which might also allow high-powered suspects to feel they have a better chance to manipulate the process and beat charges. End Comment
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